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15 ROBERT HUNTER BIDEN

16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

18 **WESTERN DIVISION**

19 ROBERT HUNTER BIDEN, an
individual,

20 Plaintiff,

21 vs.

22 PATRICK M. BYRNE, an individual,

23 Defendant.

Case No. 2:23-cv-09430-SVW-PD

**PLAINTIFF ROBERT HUNTER
BIDEN'S OPPOSITION TO
DEFENDANT'S MOTION IN
LIMINE NO. 5 TO EXCLUDE ANY
TESTIMONY OR EVIDENCE
REGARDING DEFENDANT'S
CHARACTER**

Date: November 25, 2024

Time: 3:00 P.M.

Place: Ctrm. 10A

Judge: Hon. Stephen V. Wilson

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 By this motion, Defendant Patrick M. Byrne (“Defendant”) seeks to preclude
4 Plaintiff Robert Hunter Biden (“Plaintiff”) from introducing any and all character
5 evidence regarding Defendant.¹ In support of his motion, Defendant argues that any
6 and all evidence regarding Defendant’s character should not be permitted because it
7 is irrelevant to the determination of the material issues in this lawsuit and is precluded
8 by the Federal Rules of Evidence. All of Defendant’s arguments are without merit.

9 Under the Federal Rules of Evidence, character evidence in the form of prior
10 acts or conduct is permitted to prove motive, opportunity, intent, preparation, plan,
11 knowledge, or absence of mistake. Fed. R. Evid. 404(b)(2). In a case such as this,
12 prior acts and conduct is relevant to prove actual malice on behalf of the defendant.
13 *See Reader's Dig. Assn. v. Superior Court*, 37 Cal. 3d 244, 257-258 (1984) (actual
14 malice may be proven by inferences drawn from the accumulation of circumstantial
15 evidence including a failure to investigate, anger and hostility toward the plaintiff,
16 reliance upon sources known to be unreliable, or known to be biased against the
17 plaintiff); *Sanders v. Walsh*, 219 Cal.App.4th 855, 873 (2013) (same); *Christian Rsch.
18 Inst. v. Alnor*, 148 Cal. App. 4th 71, 84–85 (2007) (same). Accordingly, evidence of
19 Defendant's prior harassment directed toward Plaintiff and his family, and public
20 statements alleging abhorrent and unlawful conduct on behalf of Plaintiff and his
21 family, is directly relevant to whether Defendant acted with actual malice.

22 Moreover, evidence of Defendant's publication of other conspiracy theories in
23 the same magazine article as the statements that form the basis of this action is
24 relevant to show Defendant was motivated to make all such statements together to

¹ Defendant's motions in limine should be denied because they are untimely and because Defendant's counsel did not meet and confer with Plaintiff's counsel on any motion in limine. Declaration of Zachary Hansen, ¶¶ 2-3, Exh. "A."

1 generate as much notoriety for himself as possible and to benefit himself financially.
2 Also, evidence of Defendant's prior conduct and bad acts, including prior defamation
3 lawsuits against him, is relevant to show habit and for the purposes of impeachment
4 as well. *See Fed. R. Evid. 406, 608; see also U.S. v. Manske*, 186 F.3d 770, 779 (7th
5 Cir. 1999). Finally, Defendant's Motion is so broad that it appears to also seek to
6 exclude any character evidence of any witnesses as well. However, this is improper
7 as well because character evidence of a witness is permitted under the Federal Rules
8 of Evidence to impeach the witness's credibility for truthfulness and bias.

9 Accordingly, this motion should be denied and Plaintiff should be permitted to
10 present relevant character evidence regarding Defendant.

11 **II. ARGUMENT**

12 Motions in limine are procedural devices to obtain an early and preliminary
13 ruling on the admissibility of evidence. *United States v. Heller*, 551 F.3d 1108, 1111
14 (9th Cir. 2009). Although the Federal Rules of Evidence do not explicitly authorize
15 motions in limine, the Supreme Court has noted that trial judges have developed the
16 practice pursuant to their authority to manage trials. *See Luce v. United States*, 469
17 U.S. 38, 41 n. 4 (1984). Trial courts have broad discretion when ruling on
18 motions in limine. *See Jenkins v. Chrysler Motors Corp.*, 316 F.3d 663, 664 (7th Cir.
19 2002). However, "a motion in limine should not be used to resolve factual disputes
20 or weigh evidence." *C & E Servs., Inc. v. Ashland Inc.*, 539 F.Supp.2d 316, 323
21 (D.D.C. 2008).

22 To exclude evidence on a motion in limine, the evidence must be "clearly
23 inadmissible on all potential grounds." *Matrix Int'l Textile, Inc. v. Monopoly Textile,
24 Inc.*, 2017 WL 2929377, at *1 (C.D. Cal. May 14, 2017) (citation omitted) (emphasis
25 added). "Unless evidence meets this high standard, evidentiary rulings should be
26 deferred until trial so that questions of foundation, relevancy and potential prejudice
27 may be resolved in proper context." *Id.* (citation omitted). This is because although
28 rulings on motions in limine may save "time, cost, effort and preparation, a court is

1 almost always better situated during the actual trial to assess the value and utility of
2 evidence.” *Id.* (citation omitted). “Denial of a motion in limine does not necessarily
3 mean that all evidence contemplated by the motion will be admitted at
4 trial.” *Id.* (citation omitted). Rather, “[d]enial merely means that without the context
5 of trial, the court is unable to determine whether the evidence in question should be
6 excluded.” *Id.* Moreover, motions in limine rulings are “not binding on the trial
7 judge, and the judge may always change his mind during the course of a trial.” *Ohler*
8 *v. United States*, 529 U.S. 753, 758 n.2 (2000).

9 “Motions in limine that seek exclusion of broad and unspecific categories of
10 evidence, however, are generally disfavored.” *Kaneka Corporation v. SKC Kolon PI,*
11 *Inc.*, 2015 WL 12696109, *2 (C.D.Cal. 2015) (quoting *Sperberg v. The Goodyear*
12 *Tire and Rubber Co.*, 519 F.2d 708, 712 (6th Cir. 1975)). Courts have recognized that
13 it “is almost always better situated during the actual trial to assess the value and utility
14 of evidence. [citation omitted]...Therefore, when confronted with this situation, “a
15 better practice is to deal with questions of admissibility of evidence as they arise [in
16 actual trial]” as opposed to tackling the matter in a vacuum on a motion in limine.
17 [Citation omitted].” *Kaneka*, 2015 WL 12696109, *2. Here, Defendant seeks to
18 exclude the broad category of any character evidence. That is improper and should
19 be denied.

20 **A. Plaintiff May Present Relevant Character Evidence for Multiple
21 Purposes.**

22 Under Federal Rule of Evidence 404, evidence of a party’s prior bad acts and
23 conduct may be admissible to prove “motive, opportunity, intent, preparation, plan,
24 knowledge, identity, absence of mistake, or lack of accident.” Fed. R. Evid.
25 404(b)(2); *see also United States v. Vo*, 413 F.3d 1010, 1018 (9th Cir. 2005); *United*
26 *States v. Verduzco*, 373 F.3d 1022, 1027 (9th Cir. 2004); *United States v. Johnson*,
27 132 F.3d 1279, 1282 (9th Cir. 1997); *U.S.A. v. Lewis*, 493 F.Supp.3d 858, 862-63
28 (C.D.Cal. 2020). Courts accordingly ““admit Rule 404(b) evidence if (1) the evidence

1 tends to prove a material point; (2) the prior act is not too remote in time; (3) the
2 evidence is sufficient to support a finding that the defendant committed the other act;
3 and (4) (in cases where knowledge and intent are at issue) the act is similar to the
4 offense charged.’ ” *Vo*, 413 F.3d at 1018 (quoting *Verduzco*, 373 F.3d at 1027). “[T]he
5 district court is accorded wide discretion” in the application of these criteria, “and the
6 test for admissibility is one of relevance.” *Johnson*, 132 F.3d at 1282.

7 As an analogous example, in *Lewis*, the Court admitted evidence of prior
8 convictions for bank robberies by defendant as evidence of the defendant’s state of
9 mind for being prosecuted for the bank robbery at issue in this case. 493 F.Supp.3d
10 862-63. The Court reasoned that the prior bank robberies were admitted to by the
11 defendant, involved similar factual scenarios, and were not too remote in time. *Id.*
12 Accordingly, such evidence tended to prove that the defendant committed the bank
13 robbery at issue in this case. *Id.* The same findings are even more clear here.

14 This is a defamation action in which Plaintiff, as a public figure, must prove,
15 by clear and convincing evidence “that the libelous statement was made with ‘actual
16 malice’—that is, with knowledge that it was false or with reckless disregard of
17 whether it was false or not.” *Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1259
18 (2017) (footnotes and internal citations omitted). “The law is clear [that] the
19 recklessness or doubt which gives rise to actual or constitutional malice is subjective
20 recklessness...” (*Melaleuca, Inc. v. Clark*, 66 Cal. App. 4th 1344, 1365 (1998)) and
21 that “the finder of fact must determine whether the publication was indeed made in
22 good faith.” *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). The Ninth Circuit
23 recognized: “Direct evidence to this effect is extremely difficult to obtain, so actual
24 malice may be proven by circumstantial evidence, given the ***totality of the***
25 ***circumstances surrounding the publication.***” *Kaelin v. Globe Commc’ns Corp.*, 162
26 F.3d 1036, 1040 (9th Cir. 1998) (emphasis added). So, to show actual malice, “a
27 plaintiff may rely on inferences drawn from circumstantial evidence” of, among other
28 factors, “anger and hostility toward the plaintiff [citation], reliance upon sources

1 known to be unreliable [citations], or known to be biased against the plaintiff
2 [citations]”” *Reader's Dig.*, 37 Cal. 3d at 257-258; *See also Sanders*, 219 Cal. App.
3 4th at 873 quoting *Christian Rsch.*, 148 Cal. App. 4th at 84–85).

4 Here, as cited in Plaintiff’s opposition to Defendant’s motion for summary
5 judgment (Dkt #89), Defendant’s past statements and conduct over the past two years
6 demonstrates anger, hostility, and/or known biases against Plaintiff and/or his family,
7 including his father, President Joe Biden. That evidence is highly probative of actual
8 malice, including Defendant’s motive, intent, and plan regarding the defamatory
9 statements about Plaintiff.

10 Moreover, also as cited in Plaintiff’s opposition to Defendant’s motion for
11 summary judgment (Dkt #89), Defendant’s espousal of wild conspiracy theories over
12 the past few years is highly probative of “his reliance upon sources known to be
13 unreliable”—a factor in the actual malice analysis. Specifically, and without
14 limitation, Defendant was motivated to include as many outlandish conspiracy
15 theories in the article as he could in order to attain as much notoriety as possible,
16 which in turn would benefit him financially. These same factors show Defendant’s
17 intent in making all such statements, as well as a strategic plan to do so.

18 Finally, evidence of Defendant’s prior conduct and bad acts, including prior
19 defamation lawsuits against him, is also relevant to prove habit. Federal Rule of
20 Evidence 406 provides “[e]vidence of a person’s habit … may be admitted to prove
21 that on a particular occasion the person or organization acted in accordance with the
22 habit.”

23 As such, Plaintiff should be permitted to introduce evidence of Defendant’s
24 prior conduct to show that he has a habit of making outlandish defamatory statements
25 about individuals who have differing political views than him, and those against
26 whom he has a personal vendetta, without any supporting evidence.

27 Character evidence is also relevant for the purposes of impeachment. Federal
28 Rule of Evidence 608(a) specifically provides that “[a] witness’s credibility may be

1 attacked or supported by testimony about the witness's reputation for having a
2 character for truthfulness or untruthfulness, or by testimony in the form of an opinion
3 about that character." Also, on cross-examination, a witness's prior specific instances
4 of conduct may "be inquired into if they are probative of the character for truthfulness
5 or untruthfulness of (1) the witness; or (2) another witness whose character the witness
6 being cross-examined has testified about." Fed. R. Evid. 608(b). Character evidence
7 of a witness is also permitted to show bias on behalf of the witness. *See Manske*, 186
8 F.3d at 779 ("[t]here are no special foundational requirements for bias evidence; the
9 [party] may prove any fact or event logically relevant to show bias.") (citations
10 omitted).

11 Finally, to the extent Defendant's Motion also seeks to exclude any character
12 evidence pertaining to any other testifying witnesses, including for the purposes of
13 impeachment, this is also improper for the reasons set forth above.

14 **III. CONCLUSION**

15 For the foregoing reasons, the Court should deny Defendant's Motion In
16 Limine No. 5.

17 Dated: November 13, 2024

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By: /s/ Zachary C. Hansen

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20 *Attorney for Plaintiff*
21 *Robert Hunter Biden*

DECLARATION OF ZACHARY HANSEN

I, Zachary C. Hansen, declare and state as follows:

1. I am counsel of record for Plaintiff Robert Hunter Biden (“Plaintiff”) in the above-entitled action and am over the age of 18. I hereby submit this declaration in support of Plaintiff’s Opposition To Defendant’s Motion In Limine No. 5 To Exclude Any Testimony or Evidence Regarding Defendant’s Character. If called as a witness, I would and could testify to the matters contained herein.

8 2. Defendant's counsel, Michael Murphy, Esq., did not attempt to meet and
9 confer with me on these Motions In Limine. I attempted to meet and confer with Mr.
10 Murphy the week of October 28, 2024, but he said that he was unavailable that week
11 due to his other time sensitive deadlines. Attached hereto as **Exhibit "A"** is a true
12 and correct copy of this email exchange dated October 28, 2024 through
13 November 1, 2024.

14 3. All of Defendant's Motions In Limine, including this motion, were filed
15 on Wednesday, November 6, 2024, between 4:30 pm and 5:00 pm PST, with a hearing
16 date of November 25, 2024, on nineteen days notice instead of the required 21 days
17 notice. Plaintiff never agreed to the untimely filing of these Motions In Limine.

18 I declare under penalty of perjury under the laws of the United States of
19 America that the foregoing is true and correct. Executed on this 13th day of
20 November, 2024, at Summit, New Jersey.

/s/ Zachary C. Hansen

Zachary C. Hansen